IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT:

WRIT PETITION NO. 5590 OF 2003

Office Notes,Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Ms. Sangita Bhole for the Petitioner.

Mr. R.S.Datar for Respondent No.2.

CORAM: S. A. BOBDE, J.

DATED: 25TH OCTOBER, 2004

P.C.:

Heard.

2. By this writ petition the Petitioner Trust, who obtained an exparte decree against Respondents for eviction, challenges the order dated 10th July, 2003 passed by the Additional District Judge, Raigad. By the impugned order, the learned Appellate Court has condoned the delay of about one year, seven months and fourteen days in filing the appeal.

3. It appears that the Petitioner obtained an exparte decree against the Respondents on 20th October, 2001. The Respondents filed an appeal, which was delayed by the period mentioned above. The Respondents prayed for condonation of delay. The learned Appellate Court has allowed the application for condonation of delay and has granted stay.

4. The only contention raised on behalf of the Petitioner is that the delay has been condoned in violation of the principles of natural justice and without giving an opportunity of hearing to the Petitioner. A statement to this effect has been made by the Petitioner in para 2 of the petition. In ground (e) of the Petition, the Petitioner has further alleged that "no notice of the said Appeal and application for condonation of delay was served upon the

Petitioner".

5. The above contention suffers from gross suppression of a material fact as pointed out by Mr.Datar, the learned Counsel for the Respondents. A Bailiff report dated 4th July, 2003 clearly shows that the Bailiff attempted to serve a notice and a copy of the application on the Chief Trustee, who has filed the present petition. This was refused by him. This Bailiff report is not disputed by the learned Counsel for the Petitioner, who however submits that when a subsequent attempt was made on the next date to serve the Chief Trustee of the Petitioner, he was not available.

6. Having considered the matter, I am of view that the Petitioner has suppressed a material fact in the petition in not disclosing the fact that he refused service of the

application for condonation of delay. Not only that but the Petitioner has stated that no notice of the said appeal was served upon the Petitioner, knowing full well that he has refused the service. This is clearly a conduct which disentitles the Petitioner to any relief.

6. In the circumstances, the impugned order is not liable to be interfered with. Petition is dismissed with costs.

Sd/-

(S. A. BOBDE, J.)